



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

ENG'S PHARMACY LLC
PO BOX 2686
STAFFORD TX 77497

Carrier's Austin Representative Box

Box Number: 01

Respondent Name

UTICA MUTUAL INSURANCE CO

MFDR Date Received

APRIL 8, 2011

MFDR Tracking Number

M4-11-2690-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The prescriptions for all the TWCC patients filled by our pharmacy are based on the pharmaceutical fee guidelines mandated by the TWCC. **We use First Data Bank information for our AWP.**"

Amount in Dispute: \$1,006.93

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: The insurance carrier, or its agent, responded to the request for medical fee dispute resolution but did not submit a position summary.

Response Submitted by: Utica Mutual Insurance Co., PO Box 5310, Binghamton, NY 13902

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 6, 2010	ZOLPIDEM TARTRATE 20MG TAB	\$524.40	\$524.36
December 6, 2010	TIZANIDINE HCL 4MG TABLET	\$397.83	\$397.82
December 6, 2010	HYDROCODON-APAP 7.5-750	\$84.70	\$84.65

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307, effective May 25, 2008 33 Texas Register 3954 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.503, 29 Tex. Reg. 2346, sets out the reimbursement for the pharmaceutical services in dispute
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - CF – Negotiated contract price with providing pharmacy./Fee guideline MAR reduction calculated based on AWP First Databank publish price.
 - Reductions in payment are the result of Network rates with the providing pharmacy or payment for mandatory [sic] generic substitution when available, unless otherwise specified on the prescription.
 - The audit company of the insurance carrier submitted a bill rejection form dated December 30, 2010 that stated the bill had not been processed and is being returned for the following reason: Zolpidem 10 mg – Plan limit exceeded max qty# 15/30days.
1. Did the insurance carrier, or its agent, submit a copy of the contract?
2. How is reimbursement established for the service(s) in dispute?
3. What does §134.503(c)(3)(A) require?
4. Did the requestor support its request for additional reimbursement?

Findings

1. The insurance carrier reduced or denied disputed services with reason code CF – “Reductions in payment are the result of Network rates with the providing pharmacy or payment for mandatory [sic] generic substitution when available, unless otherwise specified on the prescription.” Documentation provided by the parties in this medical fee dispute is reviewed. The Division finds that there is insufficient documentation to support that a contract exists between the parties in this dispute. This reduction reason is not supported. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines.
2. Reimbursement for the service in dispute may be established by applying 28 Texas Administrative Code §134.503, effective from March 14, 2004 (29 Tex. Reg. 2346), which states, in pertinent part:
 - (a) The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:
 - (1) The provider's usual and customary charge for the same or similar service;
 - (2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.
 - (A) Generic drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee = MAR;
 - (B) Brand name drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee = MAR;
 - (C) A compounding fee of \$15 per compound shall be added for compound drugs;
 - (3) A negotiated or contract amount.

Review of the explanation of benefits, position statements, and other documentation provided by the parties finds that: (1) the insurance carrier did not submit a copy of the contract supporting that a contract exists between the parties; and that (2) the insurance carrier did not support the requestor is part of their Network. Consequently, the MAR in this medical fee dispute is established by determining the lesser of the charged amount and the AWP formula pursuant to 28 Texas Administrative Code §134.503(a)(2).

3. 28 Texas Administrative Code §134.503(a)(2) states, in pertinent part, that “The fees established by the following formulas [are] based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.” The preamble to §134.503, adopted to be effective January 3, 2002, 26 Texas Register 10970, provides guidance on the requirement that the AWP must be “in effect on the day” the drug is dispensed.

COMMENT: Commenter contended that the nationally recognized pharmaceutical data is too broad. Some pharmacists use the daily AWP updates provided by First Data, some use weekly, and some use the monthly publication. Commenters recommend that the Commission specify a specific pharmaceutical reimbursement system that insurers must use to determine the AWP of drugs. Since pricing can differ daily, this will result in uniformity of reimbursed amounts and should prevent many medical disputes. Some commenters recommend that the Commission adopt by reference First Data Bank's monthly "Price Alert" as modified for the Medicare system, as the reimbursement system publication to be used by insurers and bill review agents since it has recently been adjusted to reflect accurate and lower AWP's.

RESPONSE: The Commission disagrees with the suggestion to select one source for AWP. The Commission wishes to allow flexibility for whichever nationally recognized pharmaceutical reimbursement system the carrier selects and will monitor to determine if future changes are warranted.

COMMENT: Commenters requested clarification regarding whether AWP should be updated weekly or daily. Commenter recommends updating daily.

RESPONSE: The Commission agrees with daily updating, but disagrees that clarification is necessary. Section 134.503(a)(2) states that reimbursement is based on the average wholesale price in effect on the day the prescription drug is dispensed.

The January 3, 2002 adoption preamble establishes that the Division expects AWP prices to be updated daily. Because the requestor has the burden of proof in this medical fee dispute, it must provide evidence to support that any asserted AWP values used to calculate reimbursement pursuant to §134.503(a)(2) were in effect on the day the disputed drug was dispensed. A mere assertion of the rate in effect on the day that the drug is dispensed is not sufficient.

4. The pharmaceutical in dispute was dispensed on December 6, 2010. After thorough review of the information and documentation provided by the parties, the Division finds:
- The respondent alleged that it used a First Databank published price per unit; however, the respondent did not provide any evidence to support the asserted AWP price or effective date.
 - In order to refute the carrier’s payment in this medical fee dispute, the requestor alleged that a First Data Bank AWP pricing of 0.438 per unit for HYDROCODON-APAP 7.5-750, 200 count, NDC 00591038701 and 1.465 per unit for TIZANIDINE HCL 4MG TABLET, 225 count, NDC 00185440051, should be used as a basis for additional reimbursement. The requestor did not provide an AWP for ZOLPIDEM TARTRATE 20MG TAB, 90 count, NDC 13668000505. The requestor did not provide any evidence, such as a print out of the First Data Bank prices, to support the billed amount is valid for the date of service in question; however, review of the Divisions’ drug database shows that the AWP used by the requestor reflects an amount that is same/similar to the requestors alleged AWP pricing as shown in the table below:

DATE	MEDICATION	§134.503 (a) (1)	§134.50 3(a) (2)	PAID	Additional Due
03/06/06	Zolpidem Tartrate 20MG Tabs (90 Units)	\$524.40	\$524.36	\$0.00	\$524.36
04/05/06	TizanidineHCL 4MG Tablets (225 Units)	\$416.10	\$416.09	\$18.27	\$397.82
04/05/060 5/09/06	Hydrocodon-APAP 7.5-750 (200 Units)	\$113.50	\$113.45	\$28.80	\$84.65
					\$1,006.83

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the Requestor is entitled to \$1,006.83 additional reimbursement.

Conclusion

For the reasons stated above, the division finds that the requestor has supported its request for additional reimbursement. As a result, the amount ordered is \$1,006.83.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$1,006.83 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	February 13, 2014 Date
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YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.